

**TESTIMONY OF
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U.S. DEPARTMENT OF COMMERCE**

**BEFORE THE
COMMITTEE ON ARMED SERVICES
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U.S. HOUSE OF REPRESENTATIVES**

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Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify before the Subcommittee today regarding environmental and encroachment issues. I am Dr. William T. Hogarth, Assistant Administrator for Fisheries at the National Oceanic and Atmospheric Administration (NOAA). My testimony will cover issues not only from the National Marine Fisheries Service (NMFS), but also the National Ocean Service (NOS).

I appreciate the opportunity to address issues of environmental protection in the context of military operations and readiness. NOAA's mission is to describe and predict changes in the Earth's environment, and conserve and wisely manage the Nation's coastal and marine resources. Our agency's strategic goals regarding environmental stewardship are to build sustainable fisheries, recover protected species, and sustain healthy coastal ecosystems. Our stewardship of living marine resources is conducted for the benefit of the Nation through science-based conservation and management. NOAA's role in environmental stewardship is defined legislatively through the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the Magnuson-Stevens Fishery Conservation and Management Act, the Coastal Zone Management Act (CZMA), the National Marine Sanctuaries Act, and others. In addition, NOAA provides products and services to our military, from weather forecasts to hydrographic data, to ensure they have the information they need to be prepared and to provide for our national defense.

Marine Mammals

In the MMPA, Congress found that some species and populations of marine mammals are in danger of extinction as a result of man's activities, and that such species and populations should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part. NOAA is responsible for the conservation and management of over 140 marine mammal stocks of cetaceans and pinnipeds under the MMPA.

NOAA cannot fulfill this mission by itself. We depend on the efforts of our constituents, other resource management agencies, such as the Fish and Wildlife Service and the Environmental Protection Agency, and agencies such as the Department of Defense to help us fulfill these stewardship responsibilities.

Over the last few years, NOAA and the Navy have developed a productive working relationship. NMFS and the Navy have begun a number of efforts to improve coordination between the two agencies. For example, NMFS and Navy have established an Environmental Coordinating Group to not only discuss issues of joint concern, but also as a way for the agencies to educate each other on their respective responsibilities and missions. Discussions have focused on the integration of agency processes under the ESA and the MMPA, as well as the constraints the military faces in achieving their mission responsibilities. Both sides have learned a great deal from this working group, and have dedicated staff to further discussion of these important issues.

I have been meeting with Mr. H.T. Johnson, Assistant Secretary of the Navy for Installations and Environment, on ways to expand our partnership in achieving our distinct yet complementary missions. These meetings have focused on opportunities to expand coordination efforts for complying with applicable resource laws, and ways to continue to increase cooperative research and outreach on complex scientific issues. Plans are in the works for Scott Gudes, Deputy Undersecretary for Oceans and Atmosphere at NOAA, and Admiral West, Naval Deputy to NOAA, to meet on April 5th to further the dialogue begun by Mr. Johnson and myself.

The stranding of beaked whales in the Bahamas in May 2000 was an unfortunate incident. However, that incident galvanized NOAA and Navy to make strong efforts to improve our working relationship. Our combined efforts to research the cause of the strandings and to respond to public concern has worked very well. Cooperatively, yet with full recognition of our respective responsibilities, the Navy and NMFS conducted a thorough, systematic, and science-based investigation into the matter. The report, "Interim Findings on the Stranding of Beaked Whales in the Bahamas," was made public on December 20, 2001.

NOAA is working hard to be as responsive and efficient as possible in dealing with Navy and other agencies. Our ability to be efficient stems in large part from our ability to discuss activities with our Navy counterparts in advance, and with an understanding of the overall activities and needs of the program. For this reason, the Navy established a Navy/NMFS liaison position in the Office of Protected Resources at NMFS to help with intra- and inter-agency communication.

Our ability to be responsive is related to two capabilities: (1) our ability to provide scientific analysis and review, and (2) our ability to carry out our regulatory responsibilities in a timely manner. In both cases, we are constrained by workload demands and limited resources. With regard to science, we continue to strengthen our acoustics program at NMFS to focus our research and provide better analytical review. This is a fairly new program that is working to

build expertise within the agency. We also are developing noise standards for the impacts of various marine activities on marine mammals and we are producing a computer tool for calculating acoustic safety zones. With respect to our regulatory program, our limited staff is directly related to our ability to meet the increasing demands by Navy and other agencies. However, to the extent the Navy and other action agencies can plan sufficiently far in advance of activities and provide us with adequate time to work with them at the earliest possible stages, the implications of the permit process should be minor.

Coastal Management

For 25 years, CZMA has brought state and Federal interests together to address the complex issues confronting the Nation's coasts. The federal coastal zone management program is operated out of NOAA's National Ocean Service. The CZMA strikes a balance between the need to conserve coastal resources and the need to provide for development, recreation and other priority uses of the coastal zone. The Act gives States the primary authority to determine how best to achieve this balance, but requires States to give priority consideration for, among other coastal-dependent activities, the siting of major facilities related to national defense (CZMA § 303(2)(D)). The CZMA contains the means to ensure that our military is able to develop the facilities it needs and to train the men and women of our armed forces, and at the same time to ensure that the important objectives of the Coastal Zone Management Act are met.

The States' primary ability to review military activities is through the CZMA section 307, called the "Federal Consistency" provision. This review authority is of critical importance to the States to ensure effective and adequate consideration of the federally approved State coastal management programs. Federal Consistency requires that federal actions affecting the uses or resources of a State's coastal zone must be consistent to the maximum extent practicable with the State's federally approved coastal program.

Because actions by the federal government, including Department of Defense activities, can have a substantial effect on the coastal zone, the Federal Consistency authority is the primary incentive for many States to participate in the coastal management program. While there is often negotiation between Defense agencies and the States through this authority, States concur with approximately 93-95% of all federal actions reviewed.

The CZMA contains controls to ensure that other important federal objectives are met, including national defense. First, Defense activities are only subject to State CZMA review if the activity will have coastal zone effects. Thus, although the scope of coastal zone effects includes both direct and indirect effects, there are many activities occurring on military facilities that are not subject to the CZMA. Federal Consistency only applies when an activity will have an effect off the base on a State's coastal resources. The second control is that NOAA must approve the State programs and later changes to the programs. Through this process, NOAA ensures that States continue to give priority consideration to national defense facilities. For example, NOAA denied

the request of the State of North Carolina to change its coastal program to regulate low-level military aircraft in flight. Following NOAA's denial, NOAA mediated an agreement between the Marine Corps and the State that addressed the State's concerns on the low-level training flights. The third control is that Federal agencies may proceed with their activities over a State's CZMA objection when Federal law applicable to the agency prohibits compliance. The fourth control is that if there is a dispute between a Defense agency and a State, NOAA is often asked to mediate, and we have resolved many issues through mediation to the satisfaction of all.

NOAA has worked with the Department of Defense to facilitate the CZMA process. Examples of this cooperative effort include:

- When the State of California and the local coastal community were concerned with possible human health effects and effects to marine mammals and birds from radar emissions from a Navy radar testing facility, NOAA mediated the matter by putting together a panel of five radar experts from around the country to review the facility and provide their evaluations and recommendations. A report prepared by the panel concluded that, as a general matter, the facility was safe, but that certain safeguards should be strengthened. In response, Navy deployed these safeguards and continues to work with the State of California to resolve concerns raised by the local community.
- NOAA has been assisting Navy to develop Uniform National Discharge Standards, under the Clean Water Act, for armed forces vessels. This large undertaking by Navy and NOAA has helped, and continues to help, Navy devise ways to address the CZMA programs of all the affected coastal states.
- When the Air Force proposed to allow commercial space launches from Vandenberg Air Force Base in California, which would result in the temporary closure of down range beaches used by the public, NOAA mediated an agreement between the State of California and the Air Force. The agreement allowed the launches to occur, while minimizing impacts to public access of the beaches.

NOAA and DOD have worked together to ensure that our military is able to develop the facilities it needs and to train the men and women of our armed forces, and at the same time ensure that the important objectives of the Coastal Zone Management Act are met.

Other Efforts of Mutual Cooperation

There are a number of recent activities of mutual interest between NOAA and Navy that illustrate our efforts at improved coordination.

North Atlantic Right Whales The Navy continues to play an important role in efforts to protect northern right whales, one of the most endangered marine mammal species. Ship collisions with whales are a significant threat to endangered whale populations. The Navy has been a key player

in attempts to reduce ship strikes through its participation in right whale recovery plan implementation teams, and in the regional sighting advisory system in Southeast U.S. waters. In this regard, it serves as the focal point for collecting and disseminating right whale sighting locations to warn mariners away from right whales. In addition, the Navy took steps in the mid to late 1990s to alter its operations to minimize potential impacts to right whales. These measures included changing operations in right whale critical habitat to minimize the chance for interaction, and providing special training in whale identification for lookout and bridge watch personnel. These and other protective measures remain in effect today, and have been an important aspect of right whale protection.

Navy Shock Trial for the USS Winston S. Churchill The Navy requested an authorization to take marine mammals incidental to shock testing a Navy destroyer, the USS WINSTON S. CHURCHILL, in 2000. All new Navy ship designs are tested for their ability to withstand a large, nearby explosion. Given the potential for impacts to marine mammals from such an activity, NMFS is responsible for working with the Navy to identify ways to conduct the activity so that it will result in the least impact to marine mammals. NMFS staff have been recognized by the Navy, through inclusion in the group award for Environmental Excellence, for their efforts to work cooperatively in achieving the Navy's stewardship goals in the course of a military activity.

Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar This is a new sonar being developed by the Navy for long range detection of submarines. The Navy anticipates using the sonar in training and military operations, and has requested appropriate authorizations for incidental marine mammal and endangered species takes from NMFS. The Navy has also consulted with NOAA's National Marine Sanctuary Program for expected impacts to National Marine Sanctuary resources pursuant to section 304(d) of the National Marine Sanctuaries Act. NOAA and Navy staff have worked diligently to ensure that consultations were carried out effectively to address the responsibilities of both agencies. NOAA expects to make a decision on the Navy's requests shortly.

National Marine Sanctuary Designations Since 1972, thirteen National Marine Sanctuaries have been designated and each designation process was done in close coordination and consultation with the Department of Defense. In each instance, both agencies made agreements that allowed each to achieve its respective mission. For example, when the National Marine Sanctuary Program designated the Olympic Coast National Marine Sanctuary, the Navy agreed to stop bombing Sea Lion Rock to protect sensitive marine mammals. When the Hawaiian Islands Humpback Whale National Marine Sanctuary was designated, NOAA conducted a streamlined "one-stop-shopping" consultation on all existing Navy activities to eliminate the need for individual, case-by-case consultations.

Coral Reefs The Coral Reef Task Force was established in 1998 by Executive Order 13089 to help lead and coordinate U.S. efforts to respond to the world-wide decline of coral reef ecosystems. The Task Force, co-chaired by the Secretary of the Interior and the Secretary of Commerce, includes the heads of eleven federal agencies, including the Secretary of Defense and the Governors of seven U.S. States, Territories and Commonwealths with responsibilities for coral reefs. NOAA and DOD have worked closely with the Task Force to advance U.S. coral reef conservation efforts and fulfill their fundamental missions. For example, the Department of Defense, represented by the Office of the Assistant Secretary of the Navy, was the first federal agency of the U.S. Coral Reef Task Force to develop an agency specific Coral Reef Protection Implementation Plan, as required by the Coral Reef Executive Order. The Plan outlines actions taken by DOD to fulfill its responsibilities under the Order. In addition, DOD has implemented a number of agency policies or procedures to reduce impacts of DOD mission activities on coral reef ecosystems. These efforts have helped to avoid harmful impacts to reefs by increasing awareness of reef issues during planning and implementation of DOD activities.

MMPA Reauthorization The existing regime under the MMPA and ESA is fairly flexible. NOAA recognizes that the definition of harassment under the MMPA can be confusing at times, and therefore difficult for the regulated community to understand and apply. That is why we are working closely with DOD, the U.S. Fish and Wildlife Service, and the Marine Mammal Commission to propose a revised definition. We agree that a clearer definition of harassment would be beneficial to the regulated community.

Research The Navy, principally through the Office of Naval Research (ONR) and the Office of the Chief of Naval Operations, is one of the leading institutions, worldwide, in funding scientific research on the effects of anthropogenic sound on marine mammals. We are working with the Navy to identify ways we can cooperatively fund research. Three examples of our joint research efforts are NMFS and ONR joint sponsorship of a National Research Council panel on ambient noise; NMFS and ONR joint sponsorship of research on the effects of explosions on marine animals; and the use of passive acoustics to conduct marine mammal surveys. In addition, we are working with Navy and the Marine Mammal Commission to convene a symposium on reducing shipping noise through ship design changes.

Timelines

Although we have made significant strides, we continue to face challenges in effective coordination between NMFS and the Navy. One of the largest problems in this area is having sufficient time to work through issues with the Navy. The Marine Mammal Protection Act provides mechanisms to allow agencies to carry out their missions, while at the same time ensuring those missions have no more than a negligible impact on marine mammals. To the extent the Navy and other action agencies can plan sufficiently far in advance of activities and provide us with adequate time to work with them at the earliest possible stages, the implications of the permit process should be minor. One way to give the Navy more flexibility and to provide

us with adequate time to carry out our responsibilities is to take a more programmatic approach to Navy activities. Programmatic consultations provide a flexible way to address a number of related activities in advance.

Suggestions

Your invitation asked how Congress can assist agencies in striking a balance between the mission of military service and that of federal resource agencies. One way would be to help us address the worldwide marine noise issue. For NOAA, this is the primary scientific issue with respect to Navy activities and our permitting responsibilities. Noise in the seas from human activities is a newly-recognized source of pollution that poses a potential hazard to marine mammals. Few ocean areas are unaffected by anthropogenic noise. Future noise increases are inevitable as human activities proliferate and intensify. At the present time, we are severely constrained by the limitations of scientific knowledge with respect to ocean noise. If we can better understand the impacts of worldwide noise on marine mammals, we can work more effectively with the military and the public to find the most operationally effective ways to cause the least impact to marine mammals.

Conclusion

In conclusion, for this partnership between military and natural resource agencies to work, we must continue to develop a common vision and understanding of our expectations and needs, and take advantage of opportunities for success. I am committed to a continued investment by NOAA to work with Navy and other resource management agencies to improve our ability to protect the marine environment in the context of military operation and national security considerations.

Mr. Chairman, this concludes my testimony. Once again, thank you for the opportunity to be here today. I look forward to answering any questions you or members of the Subcommittee may have.